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14

Application Number

10/622,157

Filing Date

July 17, 2003

First Named Inventor

Warren R. White

Art Unit

3643

Examiner Name

Bethany L. Griles

Attorney Docket Number

2106-00101

ENCLOSURES (Check all that apply)☐

Fee Transmittal Form

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Fee Attached

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Amendment/Reply

☐

After Final

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Affidavits/declaration(s)

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Extension of Time Request

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Express Abandonment Request

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Information Disclosure Statement

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☐Response to Missing Parts/
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Petition

☐Petition to Convert to a
Provisional Application☐Power of Attorney, Revocation
Change of Correspondence Address☐

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☐After Allowance communication
to Technology Center (TC)☐Appeal Communication to Board
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(Amended Appeal Brief)☐

Proprietary Information

☐

Status Letter

☒Other Enclosure(s) (please
Identify below):

Acknowledgment Postcard

Remarks

Notice of Appeal and Appeal Brief Fees previously paid on July 14, 2004.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENTFirm
or
Individual nameMark E. Sooty
Conley Rose, P.C.

Signature

Date

May 18, 2005

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May 18, 2005

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130377.05/2106-00101



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Warren R. White	§	Group Art Unit:	3643
Serial No.:	10/622,157	§		
Filed:	07/17/03	§	Examiner:	Bethany L. Griles
For:	Mobile Cattle Hospital	§	Confirmation No.:	1912

THIRD AMENDED APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 4450
Alexandria, VA 22343-1450

Att'y. Docket No. 2106-00101
Date: May 18, 2005

Sir:

This paper is filed in response to the final Office action dated April 26, 2004, and in response to the Notice of Non-Compliance dated January 13, 2005, and the Notice of Non-Compliance dated May 10, 2005.

I. REAL PARTY IN INTEREST

The real party in interest is the inventor Warren R. White.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF THE CLAIMS

Originally filed claims: 1-31.

Claims cancelled by Preliminary Amendment in favor of those same claims in the issued parent case: 1-11 and 18-27.

Cancelled claims: 18-31.

New claims: 32-34.

Thus, claims 12- 17 and 32-34 are appealed.

IV. STATUS OF THE AMENDMENTS

There were no after-final amendments.

V. SUMMARY OF THE INVENTION

Embodiments of the invention are directed to a trailer comprising various pieces of equipment used to treat animals, where the trailer may be selectively placed close to the animals (e.g., a pen of cattle in a feedlot operation). (Specification Abstract). Figure 2, reproduced immediately below, is illustrative of various embodiments of the invention.

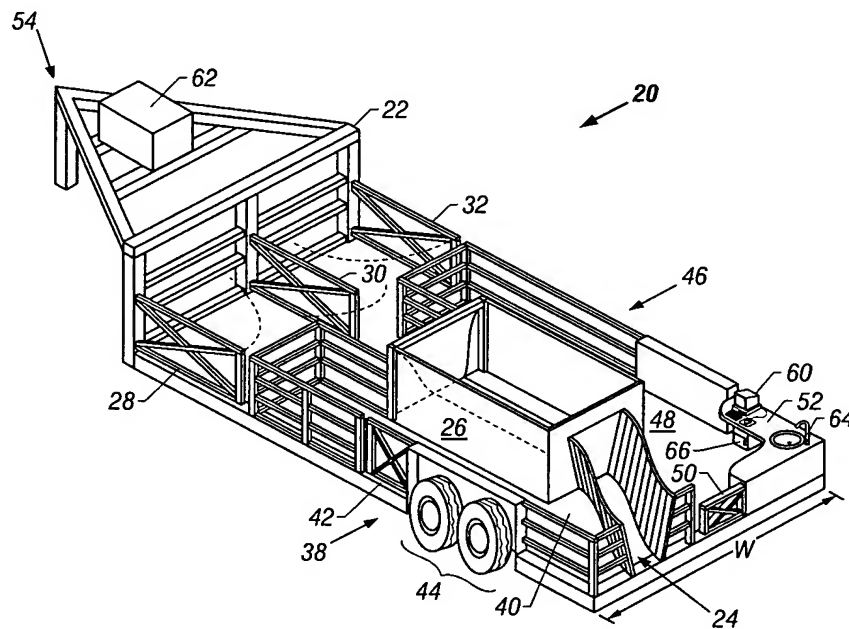


FIG. 2

In particular, cattle or other animals may enter the trailer by way of an offset walkway 24 which leads to a squeeze chute 26. (Specification Paragraphs [0027] and [0028]). After working of an animal in the squeeze chute 26, the animal may selectively exit the trailer to the left or right, depending on the configuration of the gates 28, 30 and 32. (Specification Paragraph [0029]; *see also* Figures 3A and 3B).

Cattle and other animals resist forced movement if that movement involves climbing or descending steep slopes. (Specification Paragraph [0032]). In accordance with embodiments of the invention the frame of the trailer may be selectively raised for relocation, and then placed at least partially on the ground during use in order to ease the movement of animals on and off the trailer. (Specification Paragraph [0033]). Figures 4A and 4B, reproduced immediately below, are illustrative of this concept.

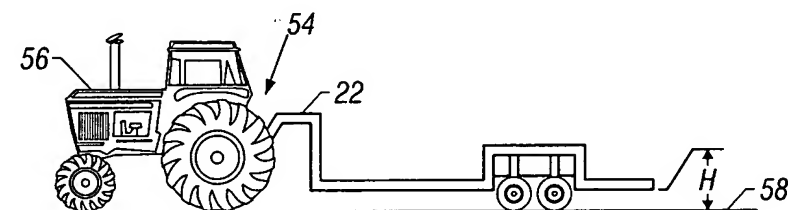


FIG. 4A

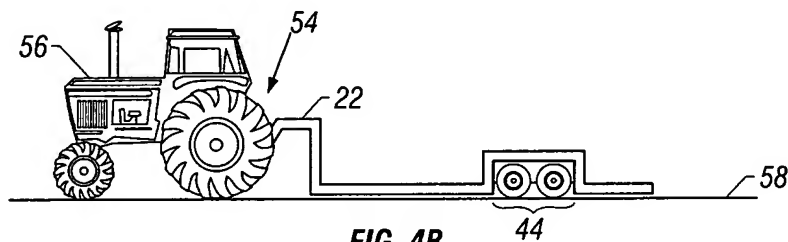


FIG. 4B

In particular, Figure 4A illustrates a configuration with the trailer raised, possibly for relocation. (Specification Paragraph [0033]). Likewise, Figure 4B illustrates a configuration where the frame of the trailer sits at ground level, reducing the vertical distance the animals must traverse. (*Id.*). Although the components mounted to the trailer are not shown in Figures 4A and 4B for reasons of clarity, referring somewhat simultaneously to Figure 2, 4A and 4B it is seen that the spatial relationship of the various components mounted on the trailer (squeeze chute, gates, tongue) does not change as between the raised and lowered configurations.

VI. ISSUES

Whether Mollhagen (U.S. Patent No. RE33,959) anticipates claims 12-17, 33 and 34.

Whether Mollhagen in view of Lerma (U.S. Patent No. 4,842,316) renders obvious claim 32.

VII. GROUPING OF THE CLAIMS

Claims 12-13, 15-17 and 32 stand together for purposes of this appeal.

Claim 14 stands alone for purposes of this appeal.

Claim 33 stands alone for purposes of this appeal.

Claim 34 stands alone for purposes of this appeal.

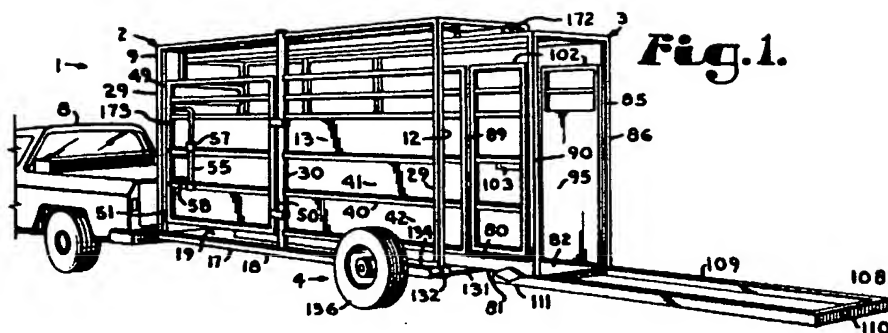
The groupings above are for purposes of this appeal only. The groupings should not be construed to mean the patentability of any of the claims may be determined, in later actions before a court, based on the groupings. Rather, the presumption of 35 U.S.C. §282 shall apply to each claim individually.

VIII. ARGUMENT

The rejections formulated in the final Office Action dated April 26, 2004 are all based on the Mollhagen reference. Thus, before discussing the particular shortcomings of the rejections, however, it is helpful to put into context the teachings of Mollhagen.

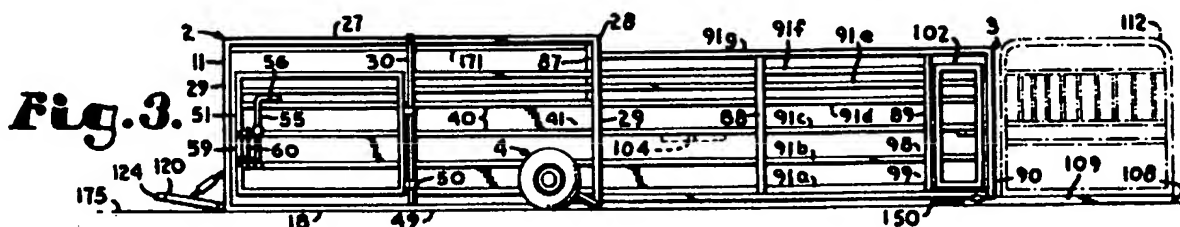
A. The Mollhagen Reference

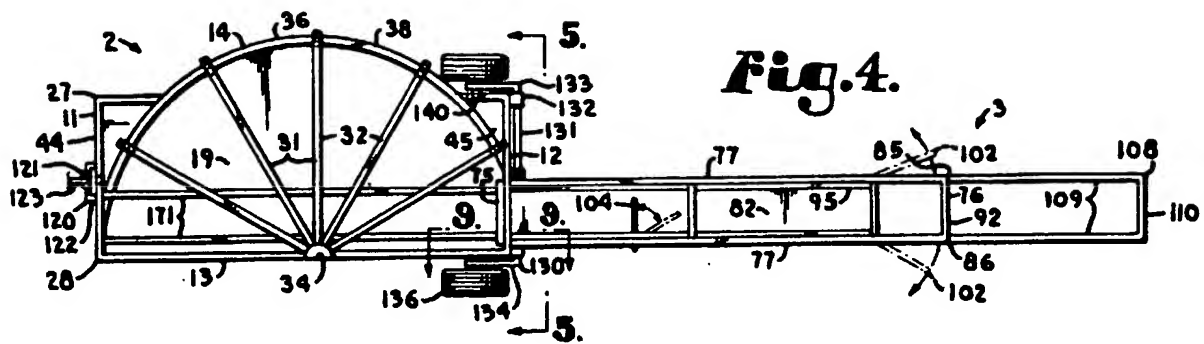
Mollhagen appears to be directed to an animal working device having a transport configuration and working configuration differentiated, at least in part, by the position of "back enclosure" telescopically coupled to a "front enclosure." (Mollhagen Abstract). Mollhagen's Figure 1 is reproduced immediately below for convenience of the discussion.



In particular, Figure 1 illustrates Mollhagen's animal working device in a transport configuration with the back enclosure 3 (reference number at upper right of figure) telescopically within or retracted into the front enclosure 2 (reference number at upper left of figure). (Mollhagen Col. 6, lines 23-28).

In a working configuration, the front enclosure 2 is pulled away from the back enclosure 3. (Mollhagen Col. 6, lines 43-51). Stated conversely, the back enclosure 3 telescopes out of the front enclosure 2. (*See Id.*). Figures 3 and 4 of Mollhagen are reproduced below to illustrate the relationship of the back enclosure 3 (and in particular the extension base 108) to the front enclosure 2 (and devices coupled thereto) when in the working configuration. Figure 3 illustrates a side elevational view, and Figure 4 illustrates an overhead view.





As between the transport configuration and the working configuration then, the back enclosure 3 translates in a horizontal plane with respect to the front enclosure 2 and devices coupled to the front enclosure 2, such as wheel 136 or tongue 123.

Turning now to the operational aspects of the Mollhagen system, in the working configuration the front enclosure becomes a holding pen for a plurality of animals, and the holding pen feeds the animals into the back enclosure.

The front enclosure 2 is capable of holding a number of large animals. From there the animals advance one at a time into the back enclosure passage 95. ... Hence, an operator can safely advance the main gate 49 whereby animals are urged out of the front enclosure 2 into the back enclosure 3....

(Mollhagen Col. 7, lines 10-28). Thus, animals move from front enclosure 2, through back enclosure 3, and if present through a squeeze chute 112. (See Mollhagen Figure 3; Col. 7, lines 51-56 (note that while the squeeze chute of Figure 3 is referenced by number 112, that number is not used in the text of the specification)). Egress of animals from the Mollhagen system apparently goes unimpeded from the squeeze chute 112, and that egress is away from the tongue 123.

B. Mollhagen Does Not Teach or Fairly Suggest the Pending Claims.

1. Claims 12-13, 15-17 and 32

Claim 12 is representative of the claims of the first grouping, and stands rejected as allegedly anticipated by Mollhagen.

Claim 12 is directed to a mobile animal hospital comprising, “a trailer having a frame and at least one set of wheels; a squeeze chute mounted on the trailer, and **wherein the squeeze chute remains stationary in a horizontal plane with respect to the set of wheels**; and wherein the at least one set of wheels is adapted to raise relative to the frame of the trailer such that at least a portion of the frame of the trailer rests at ground level when treating animals.” Even if it is assumed that the squeeze chute 112 of Mollhagen stays attached to the base 108 in the transport configuration (a point which Mollhagen does not address), the position of the squeeze chute relative to the wheels is not the same as between Mollhagen’s transport and working configurations: the back enclosure 3 telescoped away from the wheels in the working configuration (see Mollhagens Figures 1 and 3). Thus, Mollhagen does not teach or fairly suggest that “the squeeze chute remains stationary in a horizontal plane with respect to the set of wheels” in combination with the other elements of the claim.

Based on the foregoing, Applicant respectfully requests that the rejections of this grouping of claims be reversed, and the claims set for issue. As for claim 32¹, and given the deficiencies of Mollhagen as discussed above, Mollhagen considered Lerma (the propriety of which the Applicant does not admit) fails to teach the limitations of claim 32, and in particular the limitation requiring “a squeeze chute mounted on the trailer, and wherein the squeeze chute remains stationary in a horizontal plane with respect to the set of wheels,” which claim 32 requires by virtue of its dependency from claim 12. The modification that would be required to Mollhagen (in combination with Lerma) to render obvious claim 32 is neither expressly taught nor suggested,

¹ Applicant presents this discussion regarding claim 32 only to address the Notice of Non-Compliance dated January 13, 2005. This discussion should not be construed as Applicant’s primary or alternative selection of a representative claim for the grouping of claims comprising 12-13, 15-17 and 32.

thus evidencing a failure to establish a *prima facie* case of obviousness. (See MPEP 2143.01 (“THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION.”)). Moreover, the modifications that would be required to Mollhagen (in combination with Lerma) changes the principle of operation of Mollhagen, further evidencing a failure to establish a *prima facie* case of obviousness. (See MPEP 2143.01 (“THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE.”)).

2. Claim 14

Claim 14 stands rejected as allegedly anticipated by Mollhagen.

Claim 14 is directed to a mobile animal hospital having all the limitations of claim 12 and further reciting, **“wherein the first, second and third gate may be selectively arranged to allow egress of the animals off one of the first and second sides of the trailer after the animal exits the squeeze chute.”** In rejecting this claim, the Examiner relies on Mollhagen’s gates 49, 63 and 102. Mollhagen’s gate 49 (best seen in Mollhagen Figure 6) is the main gate within Mollhagen’s front enclosure 2, and is used to force animals into the back enclosure 3. (Mollhagen Col. 7, lines 10-28). “[A]uxiliary front enclosure gate 63 is hingedly mounted on the rearmost radius member 31 and opens inwardly.” (Mollhagen Col. 4, lines 33-35 (gate 63 is labeled in Figures 5 and 6)). Gate 102 of Mollhagen appears to provide access to the passage 95 of the back enclosure 3. (Mollhagen Col. 4, lines 63-64). However, the direction animals move in the Mollhagen system is from front enclosure 2, through back enclosure 3, and then if present through a squeeze chute 112. (See Mollhagen Figure 3; Col. 7, lines 51-56). Movement of the animals through these gates of Mollhagen is not “after the animal exits the squeeze chute.” Thus, Mollhagen does not teach or fairly suggest that “the first, second and third gate may be selectively

arranged to allow egress of the animals off one of the first and second sides of the trailer after the animal exits the squeeze chute,” in combination with the other elements of the claim.

Further still, by virtue of dependency from claim 12, claim 14 also requires that “the squeeze chute remain[] stationary in a horizontal plane with respect to the set of wheels.” If it is assumed that the squeeze chute 112 of Mollhagen stays attached to the base 108 in the transport configuration (which Applicant does not admit), it can be clearly seen in Mollhagen that the horizontal position of the squeeze chute with the respect to the wheel changes significantly as between the transport and working configurations. Thus, Mollhagen does not teach or fairly suggest that “the squeeze chute remains stationary in a horizontal plane with respect to the set of wheels,” in combination with the other elements of the claim.

Based on the foregoing, Applicant respectfully requests that the rejection of claim 14 be reversed, and the claim set for issue.

3. Claim 33

Claim 33 stands rejected as allegedly anticipated by Mollhagen.

Claim 33 is directed to a structure comprising, “a trailer having tongue, a frame, and at least one set of wheels; and a squeeze chute coupled to the frame of the trailer, **and wherein the position of the squeeze chute relative to the tongue is the same for both treating animals using the squeeze chute and relocation of the trailer ...**.” Even if it is assumed that the squeeze chute 112 of Mollhagen stays attached to the base 108 in the transport configuration (a point which Mollhagen does not address), the “position of the squeeze chute relative to the tongue” is not the same as between Mollhagen’s transport and working configurations. Not only is the back enclosure 3 telescoped away from the tongue in the working configuration (*see* Mollhagens Figures 1 and 3), but also the tongue 123 is raised and lowered as between the two configurations.

(Mollhagen, Col. 5, lines 13-20). Thus, Mollhagen does not teach or fairly suggest that the “position of the squeeze chute relative to the tongue is the same for both treating animals using the squeeze chute and relocation of the trailer,” in combination with the other elements of the claim.

Based on the foregoing, Applicant respectfully requests that the rejections of claim 33 be reversed, and the claim set for issue.

4. Claim 34

Claim 34 stands rejected as allegedly anticipated by Mollhagen.

Claim 34 is directed to a structure having all the limitations of claim 33 and further requiring, “the squeeze chute having an entrance portion and an exit portion, and wherein the exit portion faces the tongue of the trailer.” Given the direction of animal flow of the Mollhagen system is from front enclosure 2, through back enclosure 3, and then if present through a squeeze chute 112 (*see* Mollhagen Figure 3; Col. 7, lines 51-56), Applicant respectfully submits that the exit portion of the Mollhagen squeeze chute does not “face[] the tongue of the trailer.” In fact, it appears the Mollhagen teaches precisely the opposite.

Based on the foregoing, Applicant respectfully requests that the rejection of claim 34 be reversed, and the claim set for issue.

IX. CONCLUSION

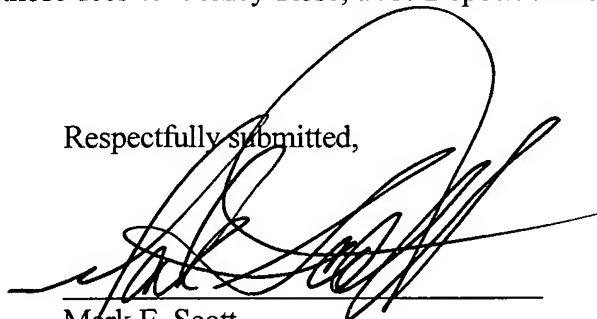
Applicants respectfully request that the Examiner’s rejections be reversed and the case set for issue.

In the course of the foregoing discussions, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when

determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art which have yet to be raised, but which may be raised in the future.

If any fees are inadvertently omitted or if any additional fees are required or have been overpaid, please appropriately charge or credit those fees to Conley Rose, P.C. Deposit Account Number 03-2769/1391-26700.

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to Mark E. Scott, is written over a horizontal line.

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ATTORNEY FOR APPLICANTS

**APPENDIX A
PENDING CLAIMS**

1-11 (Cancelled)

12. (Previously Presented) A mobile animal hospital comprising:

a trailer having a frame and at least one set of wheels;

a squeeze chute mounted on the trailer, and wherein the squeeze chute remains stationary in a horizontal plane with respect to the set of wheels; and

wherein the at least one set of wheels is adapted to raise relative to the frame of the trailer such that at least a portion of the frame of the trailer rests at ground level when treating animals.

13. (Previously Presented) The mobile animal hospital as defined in claim 12 further comprising an offset walkway leading from the back of the trailer to the entrance portion of the squeeze chute, the offset walkway forcing the animals to proceed in single file to an entrance portion of the squeeze chute.

14. (Previously Presented) The mobile animal hospital as defined in claim 12 further comprising:

a first gate hinged proximate to a first side of the trailer and also proximate to a front of the trailer;

a second gate hinged proximate to a second side of the trailer and also proximate to the front of the trailer;

a third gate hinged substantially at a center of the trailer and also proximate to the front of the trailer; and

wherein the first, second and third gate may be selectively arranged to allow egress of the animals off one of the first and second sides of the trailer after the animal exits the squeeze chute.

15. (Original) The mobile animal hospital as defined in claim 12 further comprising a set of fence panels connected to the back of the trailer, wherein the set of fence panels is adapted to fold up proximate to the back of the trailer for relocation, and wherein the set of fence panels is adapted to form a squeeze pen when unfolded.

16. (Previously Presented) The mobile animal hospital as defined in claim 15 wherein the set of fence panels connected to the back of the trailer further comprises:

a first fence panel connected to and extending substantially perpendicular from the back of the trailer when in the unfolded configuration, the first fence panel connected on a first side of an entrance to an offset walkway leading to the squeeze chute;

a second fence panel connected to and extending substantially perpendicular from the back of the trailer when in the unfolded configuration, the second fence panel connected on a second side of the entrance to the offset walkway;

a circular fence panel connected to the second fence panel, the circular fence panel's radius of curvature pointing away from the first fence panel; and

a gate panel connected to the first fence panel, the gate configured to swing within an area bounded in part by the circular fence panel.

17. (Original) The mobile animal hospital as defined in claim 12 further comprising:

a first hydraulic cylinder connected to a wheel on the first side of the trailer, and also connected to the frame, the first hydraulic cylinder configured to selectively raise and lower the wheel on the first side of the trailer; and

a second hydraulic cylinder connected to a wheel on the second side of the trailer, and also connected to the frame, the second hydraulic cylinder configured to selectively raise and lower the wheel on the first side of the trailer.

18-31 (Cancelled)

32. (Previously Presented) The mobile animal hospital as defined in claim 12 wherein the trailer further comprises at least one feature selected from the group: a computer operable for use while treating an animal; a sink mounted to the trailer; and a refrigerator mounted on the trailer.

33. (Previously Presented) A structure comprising:

a trailer having tongue, a frame, and at least one set of wheels; and

a squeeze chute coupled to the frame of the trailer, and wherein the position of the squeeze chute relative to the tongue is the same for both treating animals using the squeeze chute and relocation of the trailer;

wherein the at least one set of wheels is adapted to raise relative to the frame of the trailer such that at least a portion of the frame of the trailer rests at ground level when treating animals.

34. (Previously Presented) The structure as defined in claim 33 further comprising the squeeze chute having an entrance portion and an exit portion, and wherein the exit portion faces the tongue of the trailer.